

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of these amendments is to:

1. Adopt recent federal amendments to three existing air toxics standards and two existing New Source Performance Standards (NSPS);
2. Adopt two new federal air toxics standards; and
3. Make clear that the Commission is not adopting specific federal standards and amendments that the Environmental Protection Agency (EPA) is reconsidering.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 13, 2012, as **ARC 0165C**. A public hearing was held on July 16, 2012. The Department did not receive any comments at the hearing. The Department did not receive any comments by the close of the public comment period on July 16, 2012. No changes have been made to the amendments published under Notice of Intended Action.

Item 1 amends the introductory paragraph of subrule 23.1(2) to adopt recent federal amendments to existing NSPS and to add language indicating that an earlier date for adoption by reference may be included with the NSPS subpart designation. Item 2 amends paragraph 23.1(2)"c" to include an earlier adoption date.

The federal NSPS regulations implement Section 111(b) of the federal Clean Air Act. EPA issues NSPS for categories of sources that cause, or contribute significantly to, air pollution (not including air toxics) which may reasonably be anticipated to endanger public health or welfare. The standards apply to new stationary sources of emissions, i.e., sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed.

On June 28, 2011, EPA published amendments to the NSPS for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines (40 CFR 60, Subparts IIII and JJJJ, respectively). The Commission is adopting these amendments. For owners and operators of affected engines in Iowa, these amendments increase flexibility and make the NSPS more clear, which reduces the regulatory burden. The amendments should result in reduced costs or no additional costs to affected facilities.

In Item 2, the Commission is excluding from adoption the amendments to the NSPS for Portland Cement Manufacturing (40 CFR 60, Subpart F) that EPA finalized in September 2010. EPA has since started a reconsideration of these amendments and has stayed a portion of the amendments while EPA completes its reconsideration. To exclude these amendments, the Commission added an explanation to the introductory paragraph of subrule 23.1(2) stating that an earlier date of adoption may be specified in the paragraph adopting the federal subpart. Additionally, the Commission added an earlier adoption date to paragraph 23.1(2)"c" adopting the federal regulations for Portland cement manufacturing. When EPA completes its reconsideration, the Department of Natural Resources (Department) may initiate a rule making to adopt the federal amendments by reference.

Items 3 to 8 amend subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as National Emission Standards for Hazardous Air Pollutants, or NESHAP.

The NESHAP program implements Section 112 of the federal Clean Air Act and requires facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for hazardous air pollutants (HAP), also called "air toxics." NESHAP requirements for source sectors vary depending on the processes, activities or equipment being regulated. The NESHAP affect both new and existing major sources and area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP. Area sources are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to the 10/25 tpy levels are classified as major sources for HAP.

Unlike NESHAP for major sources, which require affected facilities to implement Maximum Available Control Technology, the NESHAP standards for area sources typically require only Generally Available Control Technology. EPA determines whether emissions reduction techniques, such as control equipment or best management practices, are “generally available” and affordable to the particular industry sector.

The Commission is adopting amendments to subrule 23.1(4) to make several changes to the NESHAP program.

In Item 3, the Commission is adopting federal amendments that EPA promulgated on January 24, 2011, to revise the area source NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities and Gasoline Dispensing Facilities (40 CFR 63, Subparts BBBB and CCCCC, respectively). EPA finalized the original NESHAP in January 2008, and the Commission adopted these standards by reference in 2009.

EPA states that these amendments provide clarifications to certain definitions and applicability provisions for both standards in response to some of the issues raised in the petitions for reconsideration. In addition, EPA indicates that several other compliance-related questions are addressed in these amendments.

The Commission is also adopting amendments to the area source NESHAP for Plating and Polishing Operations (40 CFR 63, Subpart WWWW). On September 19, 2011, EPA finalized amendments to standards that EPA originally issued in 2008. The Commission adopted the original NESHAP by reference in 2009. EPA’s amendments clarify that the emission control requirements of the NESHAP do not apply to any bench-scale activities. In the amendments, EPA also made several technical corrections and clarifications. The additional flexibility afforded by these amendments will result in reduced costs or no additional costs to affected facilities.

In Items 4, 5, 6, and 8, the Commission is making it clear that it is not adopting specific federal standards and amendments that EPA is currently reconsidering. The federal standards being excluded from adoption are:

- Amendment to air toxics standards for Portland cement manufacturing;
- Amendment to air toxics standards for stationary reciprocating internal combustion engines (RICE NESHAP) (per Executive Order 72);
- New air toxics standards for chemical manufacturing; and
- New air toxics standards for prepared feeds manufacturing.

The amendment in Item 4 revises paragraph 23.1(4)“bl” to show an earlier adoption date. This revision makes clear that the Commission is not adopting the amendments to the NESHAP for Portland Cement Manufacturing (40 CFR 63, Subpart LLL) that EPA finalized on September 9, 2010. EPA has since started a reconsideration of these amendments and has stayed a portion of the amendments while EPA completes its reconsideration. When EPA completes its reconsideration, the Department may initiate a rule making to adopt the federal amendments by reference.

Item 5 clarifies that the Commission is not adopting EPA’s recent amendments to the RICE NESHAP. On April 4, 2011, Governor Branstad issued Executive Order 72. The intent of the Order was to rescind adoption of specific amendments to the NESHAP for reciprocating internal combustion engines (also known as RICE). However, because of the administrative mechanism for rescinding adopted rules, the Order also rescinded adoption of three other NESHAP standards. Subrule 23.1(4) still includes the subparagraphs describing the three other NESHAP standards that the Order rescinded (paragraphs “ev,” “fc,” and “fd”). Because Executive Order 72 changed the NESHAP adoption date back to December 22, 2008, and these federal standards were not in effect at that time, these federal standards are no longer adopted by reference.

Executive Order 72 rescinded the RICE NESHAP amendments, as follows:

“NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the regulatory burden imposed by the RICE NESHAP rule hurts the interests of people of the State of Iowa. I hereby order and direct that ARC 9154, Item 4, the state administrative rules implementing the RICE NESHAP standard for emergency engines, be immediately rescinded pursuant the authority granted to me by Iowa Code Chapter 17A.4(8).”

Further, EPA is currently reconsidering several aspects of the RICE NESHAP. For these reasons, the Commission is not readopting the federal RICE NESHAP amendments that EPA issued in 2010.

The RICE NESHAP amendments rescinded through Executive Order 72 will not be readopted because the introductory paragraph of subrule 23.1(4) states that an earlier adoption date for specific NESHAP may be included with the subpart designation. Accordingly, the amendment adopted in Item 5 revises paragraph 23.1(4)“cz” to include an earlier adoption date for the RICE NESHAP (Subpart ZZZZ), which will confirm that the amendments EPA issued in 2010 have not been adopted.

Additionally, in Item 6, the Commission is affirming the rescission of the area source NESHAP for Chemical Manufacturing (40 CFR 63, Subpart VVVVVV) that was rescinded under Executive Order 72 by amending subrule 23.1(4) to rescind paragraph “ev.” EPA is currently reconsidering several aspects of this NESHAP. When EPA completes its reconsideration, the Department may initiate a rule making to adopt the federal NESHAP by reference.

The Commission is readopting one area source NESHAP that was previously adopted in 2010 but was rescinded in Executive Order 72. The NESHAP for Paint and Allied Products Manufacturing (40 CFR 63, Subpart CCCCCC), described in paragraph 23.1(4)“fc,” affects area sources that manufacture paint, ink or adhesive and that process, use, or generate materials containing chromium, lead, nickel, cadmium, benzene or methyl chloride. Readoption of this NESHAP will occur through the amendment adopted in Item 3. By revising the NESHAP adoption date, the area source NESHAP for Paint and Allied Products Manufacturing described in paragraph 23.1(4)“fc” will be readopted. Affected facilities are required to operate particulate control equipment to control metal air toxics and must use management practices to control volatile air toxics emissions. Existing facilities have until December 3, 2012, to comply with the NESHAP requirements. At this time, the Department is aware of only two facilities that are subject to this NESHAP.

Item 7 adds a new paragraph “ez” to subrule 23.1(4) to adopt by reference the area source NESHAP for Aluminum, Copper, and Other Nonferrous Foundries (40 CFR 63, Subpart ZZZZZZ). This NESHAP affects foundries that are area sources that melt 600 tons of metal or more per year. Foundries that melt less than 600 tons of metal per year are exempt from this NESHAP.

Affected facilities are required to implement Generally Available Control Technology to control air toxics and particulate emissions (a surrogate for heavy metal air toxics). Additionally, foundries that melt 6,000 tons or more of metal per year have emission limits and control requirements for particulate emissions. Existing facilities were required to have complied with this NESHAP by June 27, 2011.

The Department is aware of only two facilities that are subject to the NESHAP adopted in Item 7. Based on information submitted to the Department, these facilities are in compliance with the NESHAP requirements.

In Item 8, the Commission is affirming the rescission of the area source NESHAP for Prepared Feeds Manufacturing (40 CFR 63, Subpart DDDDDDD) that was rescinded under Executive Order 72 by amending subrule 23.1(4) to rescind paragraph “fd.” EPA recently proposed amendments to the federal regulation that substantially revise the requirements for some feed manufacturing facilities. When EPA completes its reconsideration, the Department may initiate a rule making to adopt the federal amendments by reference.

After analysis and review of this rule making, the Department has determined that jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. This rule making does not impose any unnecessary regulations on Iowa businesses not required by federal law. The complete Jobs Impact Statement prepared by the Department is available upon request.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective on October 24, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~October 8, 2009~~, June 28, 2011, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 2. Amend paragraph **23.1(2)“c”** as follows:

c. Portland cement plants. Any of the following in a Portland cement plant: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems. (Subpart F as amended through October 17, 2000)

ITEM 3. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~December 22, 2008~~, September 19, 2011, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 4. Amend paragraph **23.1(4)“bl”** as follows:

bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations. These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL as amended through December 20, 2006)

ITEM 5. Amend paragraph **23.1(4)“cz”** as follows:

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources with stationary reciprocating internal combustion engines (RICE). These standards also apply to new and reconstructed RICE located at area sources. For purposes of these standards, stationary RICE means any reciprocating internal combustion engine

which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ, as amended through April 20, 2006)

ITEM 6. Rescind and reserve paragraph **23.1(4)“ev.”**

ITEM 7. Adopt the following **new** paragraph **23.1(4)“ez”**:

ez. Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries. This standard applies to aluminum, copper, and other nonferrous foundries at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZ)

ITEM 8. Rescind and reserve paragraph **23.1(4)“fd.”**

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/19/12.